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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by the Indian Movement "Tupaj Amaru", a non-governmental organization in special consultative status*

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

THE BLOCKADE AGAINST CUBA IN INTERNATIONAL LAW

1. After breaking off diplomatic relations with Havana on 3 January 1961, the Government of the United States of America, by Presidential Proclamation 3447 of 3 February 1962, unilaterally decreed an economic, commercial and financial blockade against the Republic of Cuba.

2. The so-called embargo is not simply a "bilateral matter", nor was it decreed for reasons of "national security", as the representatives of the United States of America maintain; it is a purely political dispute of concern to the international community. Any efforts to cloak an economic war in the guise of an embargo are devoid of legal grounds or moral justification in a changing world.

3. From the standpoint of international legality, both the embargo and the blockade as well as the acts of reprisal and economic coercion taken by one State against another violate the imperative norms of international law and the freedom of movement of goods, persons and capital, and constitute a major obstacle to the country's development.

4. For 40 years Cuba has been and continues to be the victim of economic hostage-taking, marginalization and warfare that are unprecedented in the history of international relations. Ten successive presidential Administrations in the United States of America have endeavoured and continue with implacable determination to tighten their blockade against a small country with the obvious intention of destroying the Cuban socialist experiment which is taking place only 90 miles from the most powerful empire ever to have subjugated the world.

5. For nine years in a row since 1992, most recently with a broad majority of 167 votes in favour, 3 against, 4 abstentions and 15 absent voters, the United Nations General Assembly has adopted resolutions calling on all States to refrain from promulgating or applying laws and measures aimed at strengthening the blockade against Cuba and to take the necessary steps to invalidate the extraterritorial effect of any such laws and measures as soon as possible, in accordance with their legal regime.

6. Yet the Washington Government, in blatant defiance of the spirit and letter of the Charter of the United Nations, and in disregard of the resolutions of the General Assembly, is not only maintaining an entire set of anti-Cuban regulations, such as the Cuban Assets Control Regulations of 8 July 1963, which prohibit trade with Cuba, the Trading with the Enemy Act of 1917, the Cuban Adjustment Act of 1966 and the Cuban Democracy Act of 23 October 1992, but has also promulgated laws of an extraterritorial character and legislative measures that intensify the economic war which are counter to the norms of international law and rejected by the community of nations.

7. After the Republican victory in the 1994 congressional elections, Senator Jesse Helms, who was promptly appointed Chairman of the Senate Foreign Relations Committee, immediately announced that the Torricelli amendment would be converted and called the Cuban Liberty and Democratic Solidarity Act.

8. Two years later, on 6 March 1996, one month after two aircraft belonging to the organization Brothers to the Rescue were shot down, the United States Congress promulgated in its entirety the sinister Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton Act. This legislation, which had already been partially implemented, with the exception of Titles III and IV, is none other than the bill introduced by Robert Torricelli, representative from New Jersey, and adopted by President Bush on 23 October 1992.

9. Both the Torricelli amendment and the Helms-Burton Act, are profoundly political in nature and thus constitute another means of exerting political and economic pressure and pursuing an obvious goal: undermining and preventing normal trade relations and foreign investment in Cuba, under the threat of lawsuits and restrictions on travel to the United States of America.

10. With this political strategy, the Helms-Burton Act quite simply a double-edged sword of Damocles which the North American Empire wishes to use to force changes in Cuba's domestic and foreign policy and to overthrow the current regime in order to reinstate the rule of the marketplace on the island. From a legal standpoint, it is a genuine aberration in the form of a surreal legal "trick" that is highly interventionist in spirit.

11. In the light of the interpretation by international experts and scholars in the field of constitutional law, the Helms-Burton Act, specifically as regards its legality, has been shown to constitute a serious violation of the Vienna Convention on the Law of Treaties, the Universal Declaration of Human Rights, the World Trade Organization and other instruments that the United States Government has signed.

12. It is surely obvious that the essential goal of the world's strongest economic Power is to internalize its sanctions policy in order to stifle the Cuban economy by the following means:

(a) Section 103 prohibits loans, credits or financing by individuals or agencies, including United States companies, for transactions involving confiscated property;

(b) Section 104 requires the United States Government to oppose Cuba's membership in the International Monetary Fund, the World Bank and other international development agencies;

(c) Section 109 authorizes the United States Government to spend millions of dollars ($6,111,000) to encourage acts of subversion, sabotage and terrorism and to encourage Cuban citizens to emigrate secretly.

13. Title III of the Helms-Burton Act is the most controversial. Its nature and its extraterritorial scope have provoked an adverse reaction from countries that maintain relations of friendship and cooperation with or have investments in Cuba as well as the unanimous rejection of the international community. This is because this unusual provision is a good example of legal extraterritoriality and interference in legal affairs that usually fall within the territorial scope of a State.

14. According to eminent legal experts, this is the first time in legal history that a right - the right to bring civil proceedings against any individual or legal person who "trafficks" in goods or property "confiscated" by the Cuban Government from United States nationals - has been created. For the purposes of the Helms-Burton Act, the person sued is liable for compensation that may amount to three times the value of the "confiscated" property.

15. Under Title III, a person is understood to be "trafficking" in confiscated property if he or she knowingly: (a) sells, transfers, distributes, dispenses, brokers, directs or otherwise disposes of confiscated property, or purchases, rents, receives, possesses, obtains control of, uses or otherwise acquires or maintains an interest in confiscated property; (b) enters into a commercial arrangement using or otherwise benefiting from confiscated property; or (c) causes, directs, participates in, or profits from such trafficking through another person (see Pedro Castro, Revista mexicana de politica exterior, No. 53, February 1998, p. 45).

16. The framework law authorizes and encourages United States citizens to make claims in United States courts against any person who "trafficks" in property confiscated by the Cuban Government and promises them compensation.

17. This has created legal confusion in the courts in the form of a new definition of citizenship, according to which the right to make claims is freely and retroactively extended to naturalized Cubans who took refuge in the United States and who were not United States citizens at the time their property was confiscated. Under the Act, approximately 400,000 Cubans are entitled to claim compensation from individuals and companies for their confiscated property that has passed into the hands of the Cuban State.

18. Under the Helms-Burton Act it is not necessary to prove legal ownership of confiscated property, nor are claimants required to submit property titles during any phase of the proceedings. In fact, under their protection, United States courts must present claims against foreign persons and companies and accept as "definitive proof" the certification granted under the United States International Claims Settlement Act of 1949.

19. Title IV establishes that "the Attorney General shall exclude from the United States ... any alien who the Secretary of State 'determines' is a person who ... (2) 'traffics' in confiscated property, a claim to which is owned by a United States national; (3) is a corporate officer, principal or shareholder with a controlling interest of an entity 'which has been involved' in ... trafficking in confiscated property ... or (4) is a spouse, minor child or agent of a person excludable ..." (see Cuban Liberty and Democratic Solidarity Act of 1996).

20. With no legislative norms other than the State Department's instructions to the Attorney General, the Washington Administration has denied entry into United States territory to principal shareholders and officers of main or subsidiary companies and has even revoked the visas of executives, and their immediate family members, of companies from Canada and Mexico, countries that are parties to the North American Free Trade Agreement (NAFTA).

21. The authors of the Act failed to realize that the Northern Empire will not always be able to impose its implacable desire to control other countries' behaviour, and they underestimated the international community's reaction to the Helms-Burton Act, which was one of